

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

12/18/2001

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000518

FILED: \_\_\_\_\_

STATE OF ARIZONA

GERALD R GRANT

v.

VICTOR TANIOS ZACHARY

VICTOR TANIOS ZACHARY  
2730 N 138TH AVE  
GOODYEAR AZ 85338-0000

DISPOSITION CLERK-CCC  
FINANCIAL SERVICES-CCC  
TOLLESON JUSTICE COURT

MINUTE ENTRY

TOLLESON JUSTICE COURT

Cit. No. #1963596

Charge: A. UNSAFE LANE USAGE  
B. SPEED GREATER THAN 65 MPH ON 55 MPH FREEWAY

DOB: 02/01/45

DOC: 12/19/00

This Court has jurisdiction of this appeal of Appellant's convictions for two Civil Traffic violations pursuant to the

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Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has received and considered Appellant's Memorandum. Appellee has chosen not to file a memorandum in this case. This Court has considered and reviewed the record of the proceedings from the Tolleson Justice Court.

Appellant was accused of committing two Civil Traffic violations on December 19, 2000; Unsafe Lane Usage in violation of A.R.S. Section 28-729.1 and Speed Greater than 65 MPH on a 55 MPH Freeway in violation of A.R.S. Section 28-702.01(C). Appellant's trial was scheduled for January 23, 2001. At that time Appellant appeared and the State's officer failed to appear. Both charges were dismissed by the trial court. Thereafter, on February 1, 2001, DPS Officer R.J. Epperson filed a Motion to Reinstate/Refile Charges with the Tolleson Justice Court. Officer Epperson explained he was out of town on DPS business on the trial date and that his supervisor received the subpoena the day prior to the trial. Unfortunately, the Motion to Reinstate was not mailed, faxed or delivered to Appellant. The Court's file clearly indicates that the trial court granted the Motion to Reinstate on March 5, 2001 and that the Civil Traffic Clerk "ED" mailed a copy of this motion to Appellant March 6, 2001, the day after the judge granted the motion. Also within the Court's file is a Notice of Court Date mailed to Appellant on March 6, 2001 notifying him that his trial was reset for 10:45 a.m. on April 10, 2001. Thus, it is clear from the trial court's record that Appellant was never given the opportunity to respond to Officer Epperson's request to reinstate the charges. The trial judge ruled ex parte without given Appellant an opportunity to be heard.

Cannon 3(B)(7) of the Code of Judicial Conduct provides:

A judge shall accord to every person who  
has a legal interest in a proceeding, or that

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person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding. . . .<sup>1</sup>

Similarly, the Arizona Rules of Criminal Procedure require that the court allow the opposing party ten days (plus five days if mailed) within which to file a response to a motion, unless the opposing party waives a response.<sup>2</sup>

In this case Appellant is correct: He was not given the opportunity to object or be heard on the State's Motion to Reinstate the charges. For that reason, his convictions must be reversed.

IT IS THEREFORE ORDERED reversing the findings of responsibility and sanctions imposed.

IT IS FURTHER ORDERED dismissing the charges against Appellant.

IT IS FURTHER ORDERED that the Clerk of this Court or the Clerk of the Tolleson Justice Court shall refund any and all bonds or fines previously paid by Appellant in this matter.

IT IS FURTHER ORDERED that the Clerk of this Court shall notify the Arizona Department of Motor Vehicle of the dismissal of the charges in this matter.

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<sup>1</sup> This section of the Code of Judicial Conduct goes on to provide certain exceptions which are not applicable to this case.

<sup>2</sup> Rule 16.1(b), Arizona Rules of Criminal Procedure.